

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 247 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

KANTILAL MOTILAL LIMBACHIA

Versus

BECHARBHAI BIJALBHAI BHARWAD

Appearance:

1. Criminal Appeal No. 247 of 1995
MR MC SHAH for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
MR IM PANDYA A.P.P. for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 30/01/2003

ORAL JUDGEMENT

1. This appeal is filed by the original complainant i.e. the Food Inspector challenging the judgment and

order of acquittal passed by the learned Sessions Judge, Valsad at Navsari in Criminal Appeal no.14/1989 dated 21st August, 1993.

1.1. The learned Sessions Judge by the said judgment reversed the Judgment of learned Judicial Magistrate, First Class, Navsari passed in Criminal case no.2481/1989 dated 17th January, 1989 whereby the learned Magistrate had convicted respondent no.1 for offence punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act") and has sentenced him to suffer R.I. for six months and fine of Rs.1,000/- and in default S.I. for two months. It is the case of the prosecution that on 20th December, 1983 the appellant was on his usual round when he was working as Food Inspector in Navsari Municipality and while he was near a vegetable market at about 9:45 a.m. he noticed a three wheeler tempo bearing registration no.GTO 808. In that tempo there were five cans; three of aluminium and two were of galvanized. These cans contained about 60 liters of milk. This milk was meant for sale. Since the appellant had prior intimation to the effect that this milk was adulterated one, he summoned the panchas and in their presence 7.50 liters of milk was purchased after passing written intimation to respondent no.1. This milk was divided into three equal parts and collected in a glass bottle which were cleaned and dried. After complying with all the required procedure prescribed in Chapter 5 of the Prevention of Food Adulteration Rules for packing, sealing and despatching of the samples, the appellant sent one sample to Baroda Public Analyst Laboratory and two samples were handed over to Local Health Authority at Surat. On 10th January, 1984, the appellant received the report from the Laboratory which revealed that the samples collected did not conform to the standard prescribed under the Act and the Rules. He, therefore, obtained consent from the Local Health Authority for lodging prosecution against respondent no.1. On receiving the consent a complaint was lodged in the Court of learned Judicial Magistrate, First Class, at Navsari and intimation to that effect was given to respondent no.1 alongwith a copy of the report.

2. At the trial, the learned Magistrate framed charge against respondent no.1 for committing the aforesaid offences to which he pleaded not guilty and tried the same. At the trial the prosecution examined the appellant who stated in his evidence that he was at the relevant time discharging duty as Food Inspector with Navsari Municipality. On the relevant date, he had collected samples of milk from respondent no.1 and after

complying with all the formalities with regard to packing and sealing etc., had forwarded one sample to the Laboratory at Baroda for analysis. On receipt of the report from the Laboratory it was found that the sample did not conform to the prescribed standards. He obtained consent from the Local Health Authority at Surat and lodged complaint against respondent no.1. In the cross-examination by the defence an attempt has been made to show that the Food Inspector had not complied with the mandatory provisions of the Act as well as the Rules while collecting the sample and sending them to the Public Analyst and the Local Health Authority. An attempt has also been made to elicit from him that he had not churned the milk in a proper way so as to make it a homogeneous sample.

2.1. The second witness who had been examined is Manubhai Chhaganbhai Patel P.W.2 at Exh.74 who had acted as panch at the time of collecting the sample. This witness has stated in his examination-in-chief that the sample was collected by dipping the measure in the cans. He had also stated that the milk was filled in dry and cleaned bottles. In the cross-examination an attempt has been made by the defence to show that the milk in question did not belong to respondent no.1. Even the suggestion has been made to it that he is a man of the appellant and the appellant was often visiting his Sugarcane Juice shop.

2.2. The third witness is Mahendrabhai Sanmukhlal Mehta P.W. 3 at Exh.77 whose evidence is not much relevant for deciding this appeal and hence the contents are not much in detail here.

3. Apart from the oral evidence the prosecution has relied on several documentary evidence such as complaint; report of the Public Analyst; panchanam; written intimation given to respondent no.1 by the appellant to purchase the milk for the purpose of analysis etc. In the statement recorded under Section 313 of the Code of Criminal Procedure no specific defence pleaded by respondent no.1 and his defence appears to be that of general denial. At the end of the Trial, the learned Magistrate found him guilty of committing the offence and ordered him to suffer sentence as stated above. Having gone through the judgment and order of conviction respondent no.1 had preferred Criminal Appeal no.14/1981 and the appeal came to be allowed. Hence, the present appeal by the original complainant.

4. With a view to reappreciate the evidence, I have

gone through the entire record and I have also carefully considered the submissions advanced by Mr.M.C. Shah learned advocate appearing for the appellant. Mr.I.M. Pandya learned A.P.P. appearing for respondent no.2 has by and large supported the submissions made on behalf of the appellant. Respondent no.1 though served has not remained present either in person or through any advocate. It is submitted on behalf of the appellant that the learned Sessions Judge has committed an error in setting aside the judgment and order of sentence passed by the learned Magistrate. It is further submitted that prosecution has adequately proved its case against respondent no.1 and, therefore, he ought to have been convicted of committing the said offence. Lastly, it has been contended that the judgment and order of the acquittal passed by the learned Sessions Judge be set aside.

5. On perusing the judgment and order of the learned Sessions Judge it clearly appears that the main factor while passing the order of acquittal is that there is no reliable evidence on record to show that the concerned milk was properly churned by the appellant while collecting the sample so as to make it a representative sample of the homogeneous sample. On going through the evidence of the prosecution and in particular with the panch witness it clearly appears that at no point of time he has stated anything about the appellant having churned the milk contained in the cans properly so as to make it a homogeneous commodity. In absence of such reliable evidence it is difficult to hold so. It has been time and again said by different Courts that before collecting the sample, churning is to be done so as to have correct reading at the time of laboratory analysis of the said sample. This is more applicable in the cases where commodities such as milk, curd are involved. As stated above since there is no satisfactory evidence with regard to the churning of the milk by the appellant, the learned Sessions Judge has granted benefit to respondent no.1 and has acquitted him of all the charges levelled against him.

6. Having gone through the entire record and in particular the facts and circumstances of the case and also having considered the contentions advanced on behalf of the appellant, it clearly appears that the prosecution has hopelessly failed to produced reliable evidence on this aspect and, therefore, I do not find any reason to interfere with the order of acquittal passed by the learned Sessions Judge. It is well known principle of law that in any acquittal appeal unless the High Court

finds that the grounds on which the order of acquittal is passed are so perverted that no reasonable person can reach to such conclusion, it could not interfere with the judgment and upset the order of the acquittal. In this case, I find that the judgment of the learned Sessions Judge is absolutely proper and legal and, therefore, this appeal does not have any merit, it is required to be dismissed. The appeal is, therefore, dismissed.

[AKSHAY H. MEHTA, J.]

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